

Gary N. Anderson (#0088)
R. Christian Hansen (#11449)
HILLYARD, ANDERSON, & OLSEN, P.C.
595 South Riverwoods Parkway, Suite 100
Logan, UT 84321
Telephone: (435) 752-2610
Facsimile: (435) 753-8895
Email: gary@hao-law.com
christian@hao-law.com

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

INSIGHT PRODUCT DEVELOPMENT,
LLC,

Plaintiff,

v.

ICON HEALTH & FITNESS, INC.,

Defendant.

**COMPLAINT
and
JURY DEMAND**

Case No.: 1:11-cv-00139-BSJ

Judge Bruce S. Jenkins

COMPLAINT

NOW COMES Plaintiff, Insight Product Development, LLC (“IPD”), through undersigned counsel, and for its claims against Defendant, ICON Health & Fitness, Inc. (“ICON”), states as follows:

NATURE OF THE ACTION

1. This action arises from ICON’s failure to pay IPD \$199,116.71 for programming services IPD provided to ICON pursuant to an agreement between the parties. IPD seeks to recover the full amount it is owed under a breach of contract or *quantum meruit* theory.

PARTIES

2. IPD is a product development consulting company. It is an Illinois limited liability company with its principal place of business located at 4660 N. Ravenswood, Chicago, Illinois.

3. ICON is the world's largest developer, manufacturer and marketer of fitness equipment. On information and belief, ICON is a Utah corporation with its principal place of business located at 1500 South 1000 West Logan, Utah.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction, pursuant to 28 U.S.C. § 1332(a)(1), based on the complete diversity of IPD and ICON and a minimum amount in controversy in excess of \$75,000.00, exclusive of interest and costs.

5. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(a), because the acts giving rise to this dispute occurred in Logan, Utah. Furthermore, the forum selection clause in the parties' agreement mandates that all disputes and proceedings related to the agreement shall be litigated exclusively in the state or federal court having jurisdiction in Logan, Cache County, Utah. (A copy of the applicable agreement is attached as Exhibit A and discussed more fully below).

FACTUAL ALLEGATIONS

6. In 2008, IPD and ICON entered into a Product Development Agreement (“Master Agreement”) whereby IPD provided programming services to ICON in exchange for payment. (Ex. A.)

7. Under the general terms of the Master Agreement, IPD provided programming services for ICON, pursuant to a specific Research and Development Vendor Contract (“Vendor Agreement”) (the Master Agreement and Vendor Agreement shall be collectively referred to as the “Agreement”). (A copy of the Vendor Agreement is attached as Exhibit B.)

8. Specifically, IPD assisted ICON with the development of its FreeMotion Elliptical/Treadmill Console User Interface, including developing and integrating applicable software.

9. For several months, IPD billed ICON for the services it provided and ICON timely paid those invoices.

10. However, in mid-2010, ICON abruptly stopped paying IPD for the work it performed. Between June and October 2010, IPD sent ICON four invoices (“Invoices”) pursuant to the Agreement that, to date, remain unpaid:

- (a) An invoice dated June 22, 2010 in the amount of \$72,410.32;
- (b) An invoice dated August 24, 2010 in the amount of \$36,738.38;
- (c) An invoice dated September 22, 2010 in the amount of \$58,798.01; and
- (d) An invoice dated October 19, 2010 in the amount of \$31,170.00.

(Copies of the Invoices are attached as Exhibit C.)

11. The Invoices specify that a service charge of 1.5% per month shall be assessed on past due invoices.

12. IPD has made multiple requests on ICON for payment of the Invoices including, most recently, a July 14, 2011 demand letter. (A copy of the July 14, 2011 letter is attached as Exhibit D.)

13. ICON did not respond to the July 14, 2011 demand letter, has not forwarded any payment to IPD and, despite numerous requests for information, has failed to provide any explanation for its failure to pay the Invoices.

14. To date, IPD has not received payment from ICON for the programming services it provided to ICON and is owed \$199,116.71.

COUNT I
BREACH OF CONTRACT

15. IPD re-alleges and incorporates the allegations set forth in paragraphs 1 through 14.

16. The Agreement constitutes a valid, enforceable contract between IPD and ICON.

17. IPD has fully performed its obligations under the Agreement by providing the programming services set forth in the project description.

18. ICON has breached the Agreement by failing to pay IPD the amounts it is owed.

19. ICON's breach of its contractual obligations to IPD under the Agreement has proximately caused damage to IPD.

20. IPD is entitled to recover from ICON its damages incurred as a result of ICON's breach of the Agreement, specifically in the amount of \$199,116.71, plus interest, costs and fees associated with pursuing this action, as set forth in the Agreement.

WHEREFORE, Insight Product Development, LLC prays that the Honorable Court enter judgment against the Defendant, ICON Health & Fitness, Inc., in the amount of \$199,116.71, plus prejudgment interest, the costs of this action, related expenses incurred by Insight Product Development, LLC and for such further relief as the Court deems just and proper.

COUNT II
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

21. IPD re-alleges and incorporates the allegations set forth in paragraphs 1 through 14.

22. The Agreement contains an implied promise that ICON shall deal with IPD fairly and in good faith and shall not intentionally do anything to injury IPD's right to receive the benefits of the Agreement.

23. ICON's intentional failure to pay IPD the amounts it is owed has damaged IPD and interfered with IPD's right to receive the benefits of the Agreement.

24. IPD is entitled to recover from ICON its damages incurred as a result of ICON's breach of the covenant of good faith and fair dealing, specifically in the amount of \$199,116.71.

WHEREFORE, Insight Product Development, LLC prays that the Honorable Court enter judgment against the Defendant, ICON Health & Fitness, Inc., in the amount of \$199,116.71, plus prejudgment interest, the costs of this action, related expenses incurred by Insight Product Development, LLC and for such further relief as the Court deems just and proper.

COUNT III
QUANTUM MERUIT

25. IPD re-alleges and incorporates the allegations set forth in paragraphs 1 through 14.

26. IPD conferred a valuable benefit to ICON by providing programming services to ICON.

27. ICON appreciated the benefit of the programming services provided by IPD.

28. ICON accepted and retained the benefit conferred upon it by IPD under circumstances such that it would be inequitable to do so without payment for the programming services provided by IPD.

29. ICON would be unjustly enriched by retaining the benefit of the programming services provided by IPD without paying IPD for such services.

30. The reasonable value of the programming services provided by IPD to ICON for which IPD has not been paid is \$199,116.71.

WHEREFORE, Insight Product Development, LLC prays that the Honorable Court enter judgment against the Defendant, ICON Health & Fitness, Inc., in the amount of \$199,116.71, plus prejudgment interest, the costs of this action, related expenses incurred by Insight Product Development, LLC and for such further relief as the Court deems just and proper.

DATED this 6th day of September, 2011.

INSIGHT PRODUCT DEVELOPMENT, LLC

By: 
R. Christian Hansen
Attorney for Plaintiff

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Insight Product Development, LLC

(b) County of Residence of First Listed Plaintiff Cook County, Illinois
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Gary N. Anderson and R. Christian Hansen, Hillyard, Anderson & Olsen,
P.C., 595 S. Riverwoods Pkwy., Suite 100, Logan, Utah 84321

DEFENDANTS

Icon Health & Fitness, Inc.

County of Residence of First Listed Defendant Cache County, Utah
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|--|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

Plaintiff brings this action to collect on amounts it is owed by Defendant pursuant to a contract between the parties.**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 119,116.71

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/06/2011

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____